A

KHAIRUL AZIZI MAT SAAD v. TAN SRI ABDUL HAMID BADOR & ORS

COURT OF APPEAL, PUTRAJAYA
S NANTHA BALAN JCA
GUNALAN MUNIANDY JCA
B MOHD NAZLAN GHAZALI JCA
[CIVIL APPEAL NO: P-01(A)-796-12-2021]
12 SEPTEMBER 2023

C **Abstract** – *The principles of procedural fairness and natural justice involve the right of a party to be heard before an adverse decision is reached in his or her case. Fundamentally, the right to be heard encapsulates the right to know the case against one party, as recognised in art. 135(2) of the Federal Constitution, which provides that no* D *member of public service, such as the police force, 'shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard'.*

E ***ADMINISTRATIVE LAW:*** *Judicial review – Appeal for – Appeal for order of certiorari to quash decision of Disciplinary Authority dismissing police officer for misconduct – Disciplinary proceedings – Whether allegations against police officer in disciplinary letter failed to disclose report and information relied on by Disciplinary Authority of misconduct – Whether there was non-adherence to art. 135(2) of Federal Constitution – Whether there was necessity for oral hearing* F *– Whether burden on police officer to make request for document or evidence to prepare his answer to charges levelled against him – Whether non-supply of report and information prima facie prejudicial to right of police officer – Whether rendered disciplinary proceedings null and void – Whether there was infringement of rules of natural justice – Public Officers (Conduct and Discipline) Regulations 1993, regs. 35, 37 & 38*

G ***POLICE:*** *Disciplinary proceedings – Dismissal – Whether allegations against police officer in disciplinary letter failed to disclose report and information relied on by Disciplinary Authority of misconduct – Whether there was non-adherence to art. 135(2) of Federal Constitution – Whether there was necessity for oral hearing* H *– Whether burden on police officer to make request for document or evidence to prepare his answer to charges levelled against him – Whether non-supply of report and information prima facie prejudicial to right of police officer – Whether rendered disciplinary proceedings null and void – Whether there was infringement of rules of natural justice – Public Officers (Conduct and Discipline) Regulations 1993, regs. 35, 37 & 38*

I

CONSTITUTIONAL LAW: *Public servants – Dismissal – Disciplinary proceedings – Whether allegations against police officer in disciplinary letter failed to disclose report and information relied on by Disciplinary Authority of misconduct – Whether there was non-adherence to art. 135(2) of Federal Constitution – Whether there was necessity for oral hearing – Whether burden on police officer to make request for document or evidence to prepare his answer to charges levelled against him – Whether non-supply of report and information prima facie prejudicial to right of police officer – Whether rendered disciplinary proceedings null and void – Whether there was infringement of rules of natural justice – Public Officers (Conduct and Discipline) Regulations 1993, regs. 35, 37 & 38*

This was an appeal filed by the appellant, a junior police officer with the rank of a lance corporal, against the decision of the High Court, refusing a judicial review application for an order of *certiorari* to quash the decision of the third respondent dismissing the appellant from service. An information was received concerning certain misconduct involving officers from Battalion 2, Pasukan Gerakan Am ('PGA') Kulim in 'Ops Wawasan' at the border of Malaysia-Thailand. The appellant was one of the officers from the said Battalion 2 who had been investigated. In the exercise of powers delegated by the Police Force Commission through the Instrument of Delegation of Certain Functions, Powers, Duties and Responsibilities ('PU(B) 441/2000') and, in accordance with reg. 35 of the Public Officers (Conduct and Discipline) Regulations 1993 ('1993 Regulations'), the Chairman of the Disciplinary Authority, the third respondent, after considering all the information received, determined that the disciplinary offences complained of were of a nature which warranted a punishment of dismissal or reduction in rank under reg. 37 of the 1993 Regulations. The third respondent found that there existed a *prima facie* case against the appellant, and this was stated in a disciplinary letter addressed to the appellant. The third respondent accordingly, as stated in the same letter, firstly directed that two charges containing the facts of the disciplinary offences alleged to have been committed by the appellant and, it was claimed, as well as the grounds on which it was proposed to dismiss the appellant or reduce his rank be sent to the appellant; and that secondly, required the appellant to make within 21 days from the date of receipt of the charges by the appellant, written representation containing the grounds upon which he wished to rely to exculpate himself. The first charge essentially concerned the allegation that the appellant had, in collusion with others, left his place of station for ten minutes which permitted smugglers to breach the security border into Thailand in breach of reg. 4(2)(g) of the 1993 Regulations by reason of being 'tidak bertanggungjawab.' The second was for his tardiness in reporting late for duty, also in breach of reg. 4(2)(g). The appellant furnished his representation in a letter and denied the allegations of misconduct in the two charges, and provided his explanation for the same. The third respondent, as the Disciplinary Authority in its meeting, deliberated on the appellant's representation and arrived at a decision that the appellant did not exculpate

himself from and was guilty of the disciplinary charges. The Disciplinary Authority found the appellant guilty of (i) the first charge and was imposed with the punishment of dismissal pursuant to reg. 38(g) of the 1993 Regulations; and (ii) the second charge and was imposed with the punishment of warning pursuant to reg. 38(a) of the 1993 Regulations. The Disciplinary Authority informed the appellant of its decision, including that the punishments would be effective accordingly. The appellant then filed judicial review proceedings against this decision of the third respondent, pursuant to O. 53 r. 3(2) of the Rules of Court 2012 ('ROC'), on a number of grounds, which primarily sought a declaration that his dismissal was unlawful; that he was still serving as a lance corporal; and that he was entitled to his salary and other benefits. The judicial review application was, however, dismissed by the High Court. Hence, this appeal. The issues that arose were whether there was, *inter alia*, (i) a failure of the respondents to furnish relevant documents to the appellant and non-adherence to art. 135(2) of the Federal Constitution ('FC'); (ii) non-compliance with the requirement for the respondents to give the grounds, facts, reports, information and all relevant documents used by the respondents in reaching the decision dismissing the appellant and notification of punishment relevant to the charge; and (iii) failure of the respondents to afford an oral hearing to the appellant.

Held (allowing appeal)

Per Mohd Nazlan Ghazali JCA delivering the judgment of the court:

(1) The crux of the grievance of the appellant was that the allegations levelled against him, as contained in the disciplinary letter, did not disclose the report and the information received and relied on by the third respondent in respect of the alleged misconduct, and for which the appellant had deposed to having no knowledge. This matter was one that was especially crucial as it touched squarely on the fundamental principle of the right of an accused to know the case he had to answer. The true and actual basis of the allegations, as set out in the two charges against him, ought not to have been kept in the dark. (paras 28 & 29)

(2) The respondents must furnish the actual information and report, which were only generally stated in the third respondent's disciplinary letter, in order to enable the appellant to meaningfully prepare his written representation. The appellant's written representation, which did not have the benefit of such information, was subsequently found to have failed to exculpate the appellant of the charges and he was ultimately punished with dismissal from the police force. The documentary and other evidence purportedly relied upon by the third respondent in arriving at the *prima facie* finding (and the subsequent process) ought to have been made available to the appellant to enable him to prepare an effective rebuttal and meaningful defence to the charges. The principles

of procedural fairness and natural justice involve the right of a party to be heard before an adverse decision is reached in his or her case. Fundamentally, the right to be heard encapsulated the right to know the case against you. This is recognised in art. 135(2) of the FC which provides that no member of public service, such as the police force, 'shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard.' (paras 29-34)

(3) The reference to the phrase 'reasonable opportunity of being heard', found in art. 135(2) of the FC, does not mean the necessity for an oral hearing. In the instant case, the Disciplinary Authority opined that the case against the appellant did not require further clarification. The third respondent did not determine that it was necessary to establish an investigation committee for the purpose of obtaining such further clarification. In other words, here, the disciplinary proceedings against the appellant concluded at the stage of reg. 37(4). The appellant did not, at any stage request for an oral hearing. Therefore, he could not complain that such right was not afforded to him. (paras 39-44)

(4) How the proceedings proceed – whether with an investigation committee and oral hearing (pursuant to reg. 37B) or without one (pursuant to reg. 37) – should not at all matter *vis-a-vis* the need for the officer in question to be furnished with documentary evidence to be relied on by the Disciplinary Authority against him, in order to enable him to prepare a proper defence. This was also because the overarching consideration here was that a disciplinary proceeding had been instituted and the punishment, in both situations, were the severe consequences of either dismissal from service or reduction in rank, should the charges be proved. Even though the requirement to supply documentary evidence to the officer is not expressly stated in reg. 37, the right to be heard under art. 135(2) of the FC is effectively replicated in reg. 34 of the 1993 Regulations (as well as in reg. 37(2)(a)). (paras 48-50)

(5) The grounds to be informed to the officer were in reference to an action proposed to be taken. And he must be given a reasonable opportunity of being heard. This concerned what was embodied in the charges framed against the officer as well as the entirety of the disciplinary letter from the Disciplinary Authority which stated the determination of a *prima facie* case of misconduct. It was crucial, therefore, that in order to ensure adherence to this requirement, the charges not only state the allegations such as in this case the charges of being absent without leave or reporting late for duty, but also in order to give true effect to the right to be heard, be supplied with or refer to the actual grounds or bases – for all intents and purposes, the evidence such as the documents including the reports and other information – on which such allegations were framed. After all, pursuant to reg. 37(4), before imposing any punishment, the third respondent here only needed to consider the

written representation submitted by the appellant, and to decide whether the applicant in that written representation exculpated himself from the charges. This, therefore, reinforced the proposition that before the third respondent got to the stage of evaluating the critically all important written representation, it was absolutely imperative that the charges against the appellant be supplied with the documents and information intended to be relied on by the Disciplinary Authority in the said charges levelled against the appellant, so that the written representation to exculpate himself represented an effective defence in the exercise of his right to be heard. (paras 51-53)

(6) In order to ensure consistency with and to give effect to the right to be heard embodied in reg. 37B(4), and art. 135(2) of the FC, it was only right that the actual grounds, being the documentary or other evidence intended to be relied on by the respondents in the proceedings against the appellant ought to have been furnished to the appellant to enable him to prepare his defence in the written representation in a fashion truly envisaged by the proper application of the right to be heard relevant in this context. As such, whilst it may be argued that reg. 37 of the 1993 Regulations do not refer to a specific or express duty on the third respondent to supply documents, materials or information used in the exercise of the respondent's discretion when directing the appellant to make representation to exculpate himself, the existence of such a duty – to make available documents and other evidence supporting the charges – was also not inconsistent with the scheme by reg. 37, when read with reg. 34 and reg. 37B, and in any event would be well in accord with the fundamental principle on the right to be heard, including the constitutional provision enshrined in art. 135(2). (paras 56 & 57)

(7) In light of the need to ensure conformity with the fundamental right to be heard in the context of reg. 37, the burden ought not to be on the officer to make a request for any document or evidence that he thinks could help him to prepare his answer to the charges levelled against him but should instead be on the Disciplinary Authority to ensure that these documents or the evidence intended to be relied on to prove the charges, were supplied to the officer to enable him to prepare a proper and meaningful written representation in his attempt to exculpate himself. The supply of document and other information to the public officer should be automatic on the part of the Disciplinary Authority whether or not the officer had made any request for the same as the officer might not know what any of these documents were, or that they even existed, or what they contained. It could even be that whilst the existence of these documentary evidence was known to the officer, he was not aware that the documents or information were being relied on by the authority to make out their allegation of misconduct against the officer. Moreover, the non-supply of the report and information in this case would also be

prima facie prejudicial to the right of the appellant to adequately and effectively prepare his answers to the charges considering that here, the appellant was a low-ranking police personnel who had to prepare his representation letter *sans* legal advice and without knowledge of the full implications of the said representation. (paras 60-63)

(8) Under reg. 37 of the 1993 Regulations, when the Disciplinary Authority communicates with an officer *vide* a disciplinary letter to inform him of a *prima facie* finding of a misconduct against him that could, as a punishment, result in his dismissal or reduction in rank, the charges framed against the officer as set out in the disciplinary letter in respect of which the officer was requested to reply by way of a written submission within 21 days must, without exception, include the document and information – or the evidence – intended to be relied on by the Disciplinary Authority to establish the charges, regardless of whether any request was made for the same. The breach of the right to be heard in this case was a fundamental procedural flaw that justified judicial appellate intervention. There had been an infringement of the rules of natural justice on the right to be heard, as enshrined in art. 135(2) of the FC, which as a consequence rendered the disciplinary proceedings null and void. (paras 64 & 65)

Case(s) referred to:

B Surinder Singh Kanda v. The Government Of The Federation Of Malaya [1962] 1 LNS 14 PC ***(refd)***

Kerajaan Malaysia & Ors v. Tay Chai Huat [2012] 3 CLJ 577 FC ***(refd)***

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal [2001] 2 CLJ 525 FC ***(refd)***

Mohamad Adri' Ammar Mohamad v. Suruhanjaya Pasukan Polis & Anor [2023] 1 LNS 2130 CA ***(refd)***

Mohd Jamaludin Mahusin v. Suruhanjaya Pasukan Polis And Anor [2023] 1 LNS 2140 CA ***(refd)***

Najar Singh v. Government Of Malaysia & Anor [1974] 1 LNS 101 FC ***(refd)***

Public Services Commission Malaysia & Anor v. Vickneswary RM Santhivelu [2008] 6 CLJ 573 FC ***(refd)***

R Rama Chandran v. Industrial Court Of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 8 CLJ 629 FC ***(refd)***

Ridge v. Baldwin [1964] AC 40 ***(refd)***

Rohana Ariffin & Anor v. Universiti Sains Malaysia [1989] 1 MLJ 487 ***(refd)***

Saiful Norddin v. Suruhanjaya Pasukan Polis & Anor And Another Appeal [2023] 1 LNS 2134 CA ***(refd)***

Shamsiah Ahmad Sham v. Public Services Commission, Malaysia & Anor [1991] 1 CLJ 23; [1991] 1 CLJ (Rep) 419 SC ***(refd)***

Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 2 CLJ 771 CA ***(refd)***

Vijayarao Sepermaniam v. Suruhanjaya Perkhidmatan Awam, Malaysia [2018] 9 CLJ 141 FC ***(refd)***

Zainal Hashim v. Government Of Malaysia [1979] 1 LNS 132 PC ***(refd)***

Legislation referred to:
Federal Constitution, arts. 5(1), 135(2)
Public Officers (Conduct and Discipline) Regulations 1993, regs. 4(2)(g), 34(1), 35, 36, 37(1), (2)(a), (b), (3), (4), (5), 37B(2), (4), 38(a), (g), Part V
Rules of Court 2012, O. 53 r. 3(2)

For the appellant - Venodjit Singh; M/s Anoop & See
For the respondents - Muhammad Sinti; SFC

[Editor's note: For the High Court judgment, please see Khairul Azizi Mat Saad v. Abdul Hamid Bador & Ors [2022] 1 LNS 366 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Nazlan Ghazali JCA:

Introduction

[1] This is an appeal filed by the appellant, a junior police officer with the rank of a lance corporal, against the decision of the High Court refusing a judicial review application for an order of *certiorari* to quash the decision of the third respondent which had dismissed an appellant from service.

[2] Having heard the appeals, examined the appeal records and considered the submissions by parties, we decided to allow the appeal and set aside the judgment of the High Court. These grounds of judgment contain the full reasons for our decision.

[3] We should state that we are also in full agreement with and adopt the reasonings contained in the grounds of judgment of this court in the cases of first, *Mohamad Adri' Ammar Mohamad v. Suruhanjaya Pasukan Polis & Anor* [2023] 1 LNS 2130 written by Justice S Nantha Balan, secondly *Saiful Norddin v. Suruhanjaya Pasukan Polis & Anor And Another Appeal* [2023] 1 LNS 2134 written by Justice M Gunalan and thirdly, *Mohd Jamaludin Mahusin v. Suruhanjaya Pasukan Polis And Anor* [2023] 1 LNS 2140 written by Justice Mohd Nazlan Ghazali – all of which appeals involved similar issues with only certain variations in factual matrix *vis-à-vis* the instant appeal, all five of which were heard on the same day by this same panel.

Key Background Facts

[4] On 11 May 2017, information was received concerning certain misconduct ('penyelewengan tugas') involving officers from Battalion 2, Pasukan Gerakan Am (PGA), Kulim in 'Ops Wawasan' at the border of Malaysia – Thailand. The appellant was one of the officers from the said Battalion 2 who had been investigated.

[5] In the exercise of the powers delegated by the Police Force Commission through the Instrument of Delegation of Certain Functions, Powers, Duties and Responsibilities PU(B) 441 dated 14 December 2000 ("PU(B) 441/2000") and in accordance with reg. 35 of the Public Officers (Conduct and Discipline) Regulations 1993 ("the 1993 Regulations"), the Chairman of the Disciplinary Authority, the third respondent herein, after considering all the information received, on 28 August 2018, determined that the disciplinary offences complained of were of a nature which warranted a punishment of dismissal or reduction in rank under reg. 37 of the 1993 Regulations.

[6] Next, the third respondent found that there existed a *prima facie* case against the appellant, and this was stated in a disciplinary letter dated 26 March 2019 addressed to the appellant. The third respondent accordingly as stated in the same letter firstly directed that two charges containing the facts of the disciplinary offences alleged to have been committed by the appellant and, it was claimed, as well as the grounds on which it was proposed to dismiss the appellant or reduce his rank be sent to the appellant; and that secondly, required the appellant to make within 21 days from the date of receipt of the charges by the appellant, written representation containing the grounds upon which he wished to rely to exculpate himself.

[7] The first charge essentially concerned the allegation that the appellant had in collusion with others left his place of station for ten minutes which permitted smugglers to breach the security border into Thailand in breach of reg. 4(2)(g) of the 1993 Regulations by reason of being "tidak bertanggungjawab". The second was for his tardiness in reporting late for duty, also in breach of reg. 4(2)(g).

[8] The appellant furnished his representation in a letter dated 27 May 2019. He denied the allegations of misconduct in the two charges, and provided his explanation for the same.

[9] The third respondent, as the Disciplinary Authority in its meeting on 23 October 2019 deliberated on the appellant's representation and arrived at a decision that the appellant did not exculpate himself from and was guilty of the disciplinary charges. It was found by the Disciplinary Authority as follows:

(i) the appellant was guilty of the first charge and imposed with punishment of dismissal pursuant to reg. 38(g) of the 1993 Regulations; and

(ii) the appellant was guilty of the second charge and imposed with punishment of warning pursuant to reg. 38(a) of the 1993 Regulations.

[10] The Disciplinary Authority informed the appellant of its decision in its letter dated 25 October 2019, including that the punishments would be effective on 23 October 2019.

[11] The appellant then filed judicial review proceedings against this decision of the third respondent pursuant to O. 53 r. 3(2) of the Rules of Court 2012, on a number of grounds, which primarily sought a declaration that his dismissal is unlawful; that he is still serving as a lance corporal; and that he is entitled to his salary and other benefits.

[12] The judicial review application was however dismissed by the High Court. Dissatisfied, he appealed against this refusal of the High Court to the Court of Appeal.

Main Governing Principles

[13] We agree and state for emphasis that in judicial review proceedings, the courts will only intervene in disciplinary cases when a fundamental procedural flaw is shown, for the Legislature has entrusted the relevant decision-making responsibility on the disciplinary authorities, not the courts. There is as such no justification for judicial interference on account only of the possibility of the courts arriving at different conclusions on the same evidence, as the courts should be concerned less with the merits of the decisions but more with the procedures and process being followed in arriving at such conclusions.

[14] We need only, on this important point, refer to a decision of the Federal Court which concerned Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980, in the case of *Kerajaan Malaysia & Ors v. Tay Chai Huat* [2012] 3 CLJ 577 which held thus:

> [36] The courts have very limited review powers over administrative determinations of public bodies and are constrained to confirm the findings in disciplinary hearings. The courts will only intervene in disciplinary cases where there was a fundamental procedural flaw. The courts cannot exceed its role in cases of this genre as the instant appeal. The courts cannot interfere merely because it may come to different conclusions on facts on the same basis of the same evidence. Weighing and assessing the evidence is the function of the Disciplinary Authority which is the body to which the legislature has entrusted the responsibility of deciding the issue, and not the courts. Hence, the court should approach cases of this genre as the instant appeal in the following way, namely, whether there has been an error in the process or whether there was procedural irregularity in the decision-making proceedings leading to the public officer's dismissal.
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> ...
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> [38] In the instant appeal, the plaintiff sought a declaration that his dismissal is unlawful, null and void and of no effect. In cases of this genre, the court reviews the lawfulness of a decision or action made by the Disciplinary Authority which is a public body. Such action is tantamount to a challenge to the way in which the decision has been made by the public body rather than the rights and wrongs of the conclusion reached.

> The court is not really concerned with the conclusions of that process and whether the conclusions were "right", as long as the right procedures have been followed. In *Ng Hock Seng v. Pengarah Am Penjara & Ors* [1998] 1 CLJ 405, in delivering the judgment of this court, Peh Swee Chin FCJ said (at p. 159):
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> > Just like a professional body being the best tribunal to judge the seriousness of misconduct of its members, in a similar vein, an employer, including a government, is the best person to judge similarly the seriousness of misconduct of an employee.
>
> [39] Thus, a court should not substitute what its thinks is the "correct" decision. What the court is concerned with is not the decision but the decision-making process. It does not entail the court substituting its discretion for that of the decision maker. "Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power", per Lord Brightman in Chief Constable of the *North Wales Police Force v. Evans* [1982] 1 WLR 1155 at p. 1173.

[15] At the same time, it should also be appreciated that the courts are however allowed to examine the merits and substance of the case (see the case of *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147). Thus the decision of the Federal Court in *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2010] 8 CLJ 629, *albeit* concerning an Industrial Court case, supports the proposition that the merits or substance of the decision of an inferior tribunal or a decision-making body could be challenged and subjected to review.

[16] Raus Sharif FCJ (later Chief Justice) delivering the judgment of the court, stated:

> [15] We find that there is merit on the submission advanced by the learned counsel for the respondent. Historically, judicial review was only concerned with the decision-making process where the impugned decision is flawed on the ground of procedural impropriety. However, over the years, our courts have made inroad into this field of administrative law. *Rama Chandran* is the mother of all those cases. The Federal Court in a landmark decision has held that the decision of inferior tribunal may be reviewed on the grounds of "illegality", "irrationality" and possibly "proportionality" which permits the courts to scrutinise the decision not only for process but also for substance. It allowed the courts to go into the merits of the matter. Thus, the distinction between review and appeal no longer holds.

Analysis And Findings Of This Court

The Pivotal Issue Of Supply Of/Access To Documents Supporting The Charges

[17] The appellant raised several grounds of appeal, which largely followed those ventilated before the High Court. These primarily included the following:

A (i) failure of the respondents to furnish relevant documents to the appellant and non-adherence to art. 135(2) of the Federal Constitution;

(ii) non-compliance with the requirement for the respondents to give the grounds, facts, reports, information and all relevant documents used by the respondents in reaching the decision dismissing the appellant and
B notification of punishment relevant to the charge;

(iii) failure of the respondents to afford an oral hearing to the appellant;

(iv) failure of the respondents to employ the orderly room procedure;

C (v) non-response by the respondents to answer the appellant's allegations in the appellant's affidavit in reply; and

(vi) non-consideration by the respondents of other forms of punishment in reg. 38 of the 1993 Regulations.

D **[18]** At the hearing of the appeal before us however, we principally focused on the argument concerning the appellant's complaint that he was denied access to the documents relied on by the respondents in the charges levelled against the appellant. The appellant alleged that although an oral request was made, the applicant was not provided by the Disciplinary Authority with material documents including copies of reports, CCTV recordings and any
E documentary evidence which were used in support of the two charges against him. Thus, in such circumstances, it was not only difficult but quite impossible for him to be heard or for him to answer the charges.

[19] The High Court however found this contention of the appellant that he had made a request for documents unsupported by any contemporaneous
F documentary evidence, carried no evidential value and an afterthought. It was denied by the respondents in their affidavit, and was only raised by the appellant for the first time in the judicial review, and was not even mentioned in the appellant's written representation dated 27 May 2019. Accordingly, it was held by the High Court that the same was not relevant in the
G appellant's attempt to exculpate himself from the charges.

The Governing Regulation 37

[20] It is apposite that reference be made to the relevant provisions of the applicable rules governing the disciplinary proceedings in the instant case.
H The disciplinary proceedings against the appellant are governed by Part V of the 1993 Regulations, in particular regs. 35 and 37. Regulation 35 empowers the Disciplinary Authority to determine the nature of the breach of discipline; whether it warrants a punishment of dismissal or reduction in rank. If the breach warrants a dismissal or a reduction in rank, the
I Disciplinary Authority should follow the procedure in reg. 37. Otherwise, the Disciplinary Authority will proceed under reg. 36. As mentioned, the third respondent decided on 28 August 2018 to proceed under the former.

[21] The provisions of reg. 37 state as follows:

> (1) If it is determined under sub regulation 35(2) that the disciplinary offence complained of against an officer is of a nature that warrants a punishment of dismissal or reduction in rank, the Chairman of the appropriate Disciplinary Authority to which the case is referred shall consider all the available information.
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> (2) If it appears to the Chairman of the appropriate Disciplinary Authority that there exists a *prima facie* case against the officer, the Chairman of the appropriate Disciplinary Authority shall:
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> (a) direct that a charge containing the facts of the disciplinary offence alleged to have been committed by the officer and the grounds on which it is proposed to dismiss the officer or reduce his rank be sent to the officer; and
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> (b) require the officer to make, within a period of twenty-one days from the date he is informed by notice in accordance with regulation 52 of the charge, a written representation containing the grounds upon which he relies to exculpate himself.
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> (3) If, after considering the representation made pursuant to sub regulation (1), the appropriate Disciplinary Authority is of the opinion that the disciplinary offence committed by the officer does not warrant a punishment of dismissal or reduction in rank, the appropriate Disciplinary Authority may impose upon the officer any of the lesser punishments specified in regulation 38 as it deems appropriate.
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> (4) If the officer does not make any representation within the period specified in paragraph (2)(b), or if the officer makes such a representation but the representation does not exculpate himself to the satisfaction of the appropriate Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.
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> (5) If the appropriate Disciplinary Authority is of the opinion that the case against the officer requires further clarification, the Disciplinary Authority may establish an investigation committee for the purpose of obtaining such further clarification.

[22] The essence of these procedural provisions may be stated in the following terms. Under reg. 37(2)(a) and (b), if the Chairman of the Disciplinary Authority is satisfied (like the third respondent herein was) that there exists a *prima facie* case of misconduct against the officer, he shall cause a letter to be sent to the officer containing the facts of the disciplinary offence and the grounds on which it is proposed to dismiss the officer or to reduce his rank. This was done on 26 March 2019. The officer is then required to make, within 21 days, a representation containing the grounds upon which he relies to exculpate himself. This, as stated earlier was done on 27 May 2019, later than the stipulated deadline. However, evidence shows that the appellant only received this letter on 7 May 2019. His response was therefore within time.

[23] Under reg. 37(3), if, after considering the representation made, the Disciplinary Authority is of the opinion that the disciplinary offence committed by the officer does not warrant a punishment of dismissal or reduction in rank, the Disciplinary Authority may impose a lesser punishment as it deems appropriate. This was not the situation in this case.

[24] And pursuant to reg. 37(4), if the officer does not furnish any representation within the period specified or the representation does not exculpate himself to the satisfaction of the Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide on the dismissal or reduction in rank of the officer. As stated earlier, the third respondent, on 23 October 2019, found the appellant guilty of the two charges against him.

The Disciplinary Letter On The Two Charges Refer To A Report And Other Information

[25] Now, focusing on the main complaint of the appellant, even though the respondents maintained that the appellant never previously complained about the alleged lack of clarity in the charges framed given the non-supply to the appellant of documents and other information relied on by the charges, it is useful to appreciate that the disciplinary letter dated 26 March 2019 which set out the two charges against the appellant is prefaced by an introductory statement, as follows:

> Bahawa **satu laporan telah diterima** oleh saya, ACP G/14206 Razali B. Abu Samah, selaku Pengerusi Lembaga Tatatertib yang menyatakan bahawa anda telah melakukan kesalahan tatatertib dan membolehkan tindakan tatatertib diambil terhadap anda.
>
> (emphasis added)

[26] This was then followed by the declaration by the third respondent in the same disciplinary letter that in his determination, setelah menimbang segala maklumat yang ada (as per the words in reg. 37(1)), a *prima facie* case had been made out against the appellant in respect of the two charges which are also set out therein.

[27] The disciplinary letter ended with the third respondent informing the appellant that he was required to provide a written representation within 21 days to contain the grounds he relied on to answer the charges and exculpate himself.

The Appellant Had No Knowledge About The Report And Other Information

[28] This is the crux of the grievance of the appellant. In that the allegations levelled against him as contained in that disciplinary letter of 26 March 2019 did not disclose the report and the information received and relied on by the third respondent in respect of the alleged misconduct, and for which the appellant had deposed to having no knowledge. We are mindful that this

complaint was only raised during the judicial review proceedings and not earlier, but in our view, the matter is one that is especially crucial as it touches squarely on the fundamental principle of the right of an accused to know the case he has to answer.

[29] We agree and appreciate the dissatisfaction of the appellant that the true and actual basis of the allegations as set out in the two charges against him ought not to have been kept in the dark. The respondents must furnish the actual information and report which were only generally stated in the third respondent's disciplinary letter dated 26 March 2019 in order to enable the appellant to meaningfully prepare his written representation.

[30] The third respondent stated in the letter of 26 March 2019 that the report and information available to him (but not shared with the appellant) led to the finding of a *prima facie* case for the appellant to answer in the charges as framed. Yet the appellant had no idea what this information was and what the report contained. And the appellant's written representation which did not have the benefit of such information was subsequently found to have failed to exculpate the appellant of the charges and he was ultimately punished with dismissal from the police force.

[31] On the facts of this appeal, including after considering the entirety of the letter of 26 March 2019 which set out the two charges levelled against the appellant, we are of the view that the documentary and other evidence purportedly relied upon by the third respondent in arriving at the *prima facie* finding (and the subsequent process) ought to have been made available to the appellant to enable him to prepare an effective rebuttal and meaningful defence to the charges.

Trite Law That Right To Be Heard Includes Right To Know Evidence Against Accused

[32] We must, in this respect, remind ourselves of the salutary observation made by Lord Denning in the landmark decision of the Privy Council on an appeal from then Malaya in a case which involved an inspector who had been dismissed from the police force in *B Surinder Singh Kanda v. The Government Of The Federation Of Malaya* [1962] 1 LNS 14; [1962] MLJ 169, at the p. 172 which reads:

> In the opinion of their Lordships, however the proper approach is somewhat different. The rule against bias is one thing. The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: *Nemo judex in causa sua*: and *Audi alteram partem*. They have recently been put in the two words Impartiality and Fairness. But they are separate concepts and are governed by separate considerations. In the present case Inspector Kanda complained of a

breach of the section. He said that his constitutional right had been infringed. He had been dismissed without being given a reasonable opportunity of being heard.

> *If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them*. This appears in all the cases from the celebrated judgment of Lord Loreburn LC in *Board of Education v. Rice* [1911] AC 179m 182; 27 TLR 378 down to the decision of their Lordships' Board in *Ceylon University v. Fernando* [1960] 1 WLR 223; [1960] 1 All ER 631, PC. *It follows, of course that the Judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other*. The Court will not enquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The Court will not go into the likelihood of prejudice. The risk of it is enough. *No one who has lost a case will believe he has been fairly treated if the other side has had access to the Judge without his knowing*. Instances which were cited to their Lordships were *Re Gregson* [1894] 70 LT 106, *Rex v. Bodmin Justices* [1947] KB 321; [1947] 1 All ER 109 and *Goold v. Evans* [1951] 2 TLR 1189, to which might be added *Rex v. Architects Registration Tribunal* [1945] 2 All ER 131; 61 TLR 445, and many others. (emphasis added)

[33] That this important legal concept prevails in common law jurisdictions is unquestioned. Lord Morris of Borth-y-Gest repeated this ruling in another landmark case of *Ridge v. Baldwin* [1964] AC 40, 113-114, as follows:

> It is well established that the essential requirements of natural justice at least include that before someone is condemned he is to have an opportunity of defending himself, and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet: *Kanda v. Government of Malaya*. My Lords, here is something which is basic to our system: the importance of upholding it far transcends the significance of any particular case.

[34] The crucial point to be made and we now emphasise is that it has long been acknowledged that the principles of procedural fairness and natural justice involve the right of a party to be heard before an adverse decision is reached in his or her case. Fundamentally, the right to be heard encapsulates the right to know the case against you. Lest it be said that such important rule has little application in Malaysian law, we need only say that this of course is even recognised in art. 135(2) of the Federal Constitution no less, which provides that no member of public service, such as the police force "shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard".

[35] In a fairly recent Federal Court decision in *Vijayarao Sepermaniam v. Suruhanjaya Perkhidmatan Awam, Malaysia* [2018] 9 CLJ 141, it was clearly ruled by the court in quashing the relevant dismissal that the appellant ought to have been supplied with all the relevant documents and reports requested by him particularly since the Disciplinary Authority had relied on those documents to decide that a *prima facie* case had been proved against the appellant.

[36] That decision was a case involving reg. 37, like presently, where the following passage from the judgment written by Ramly Ali FCJ merits reproduction:

> [81] In the present case, the appellant had also complained that he was not given any document at all by the PSC notwithstanding that specific request was made for those relevant documents including the reports that were relied upon by the PSC in finding that a *prima facie* case had been proved against him. The PSC had admitted using the reports in deciding that a *prima facie* case was proved against the appellant. Learned counsel for the appellant submitted that the Court of Appeal was plainly wrong in saying that non-supply of the documents and reports did not deprive the appellant of his right to know the case against him.
>
> [82] The right to documents related to the disciplinary proceedings is closely linked to the right for an oral hearing. Both are important elements in fulfilling the right to be heard to be afforded to the officer concerned. *We are of the view that, in view of the serious charges levelled against the appellant which ultimately had resulted in him being dismissed from the service, in all fairness, the appellant ought to have been supplied with all the relevant documents and reports requested by him particularly since the Disciplinary Authority had relied on those documents to decide that a prima facie case had been proved against the appellant, to enable him to make an effective and meaningful defence to the charges. There is a plethora of authorities that deal with the issue.*
>
> (emphasis added)

[37] *B Surinder Singh Kanda* (*supra*) was also followed in a decision of the former Supreme Court in *Shamsiah Ahmad Sham v. Public Services Commission, Malaysia & Anor* [1991] 1 CLJ 23; [1991] 1 CLJ (Rep) 419; [1990] 3 MLJ 364 which affirmed the importance of furnishing to the public officer or referring him or her to documents such as past records which are considered by the Disciplinary Authority in proving the charge of misconduct against the officer. In that case, which concerned the Public Officers (Conduct and Discipline) (General Orders Chapter 'D') Regulations 1969, the dismissal of the officer was quashed by reason of the failure of the authority to give the officer the opportunity to explain or controvert her past records which had been used by the authority in its decision against her.

[38] A similar outcome was found in the case of *Rohana Ariffin & Anor v. Universiti Sains Malaysia* [1989] 1 MLJ 487 which held that anything that restricts, or appears to restrict, a defendant's ability to present his case may be held to be a breach of procedural fairness and, thereby, susceptible to judicial review.

Non-necessity For Oral Hearing

[39] We are mindful that in making the requests for documents, the appellant herein, like the applicants in other cases, have additionally, usually, asked for the relevant authority to afford them with an oral hearing. We affirm however that the reference to the phrase "reasonable opportunity of being heard" found in art. 135(2) of the Federal Constitution does not mean the necessity for an oral hearing.

[40] The Federal Court in *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal* [2001] 2 CLJ 525 had held that "the right to be heard given by art. 135(2) of the Federal Constitution does not require that the person concerned be given an oral hearing and it could not be argued that the failure to give an appellant an oral hearing was a denial of justice ... what is important is that the officer concerned should have a full opportunity of stating his case before he is dismissed." (See also: *Najar Singh v. Government Of Malaysia & Anor* [1974] 1 LNS 101; [1974] 1 MLJ 138; and *Zainal Hashim v. Government Of Malaysia* [1979] 1 LNS 132).

[41] We observe that in the instant case, the Disciplinary Authority was of the opinion that the case against the appellant did not require further clarification. As stated earlier, under reg. 37(5), if the appropriate Disciplinary Authority is of the opinion that the case against the officer requires further clarification, the Disciplinary Authority may establish an investigation committee for the purpose of obtaining such further clarification. In the instant case, however, the third respondent did not determine that it was necessary to establish an investigation committee for the purpose of obtaining such further clarification. In other words, here, the disciplinary proceeding against the appellant concluded at the stage of reg. 37(4).

[42] Had it been otherwise, where further clarification was necessary and an investigation committee was to be established, reg. 37B would come into play. Under reg. 37B(2), if the investigation committee is of the view that the officer should be allowed to be present before the investigation committee to exculpate himself, the officer shall present himself before the committee for such purpose. This essentially is the oral hearing for the officer concerned.

[43] The Federal Court in *Public Services Commission Malaysia & Anor v. Vickneswary RM Santhivelu* [2008] 6 CLJ 573 held that in the event the Disciplinary Authority considers that the case against the officer requires further clarification, then it may appoint a committee of inquiry, and that this would be a decision of the Disciplinary Authority, not the officer or the court.

[44] In this instant case before us, as deposed in the respondents' affidavit in reply, the appellant did not at any stage request for an oral hearing. Therefore, he could not complain that such right was not afforded to him (see: *Kerajaan Malaysia & Ors v. Tay Chai Huat* (*supra*)).

[45] This, we would agree, for we find no merits in the appellant's complaint about the need for an oral hearing, especially given that he had never requested for one at the material time. We do note however that the appellant did depose in his affidavit for the purposes of the judicial review that he had no knowledge in respect of the information and report as stated in the disciplinary letter. And whilst the respondents had the opportunity to file a further affidavit to provide a response to this, they chose not to do so. Again, this nonetheless offers no evidence of the appellant raising the issue earlier, at the material time.

Analogical Support In Regulation 37B(4) On The Need To Furnish Documentary Evidence

[46] Significantly, had reg. 37B been applicable here, it must be appreciated that under 37B(4) it is expressly stated that:

> (4) No documentary evidence shall be used against an officer unless the officer has previously been supplied with a copy of the evidence or given access to the evidence.

[47] It is unmistakably clear from this provision that had the investigation committee been set up in the instant case, the report and other information relied on and generally mentioned in the letter of 26 March 2019 from the third respondent must have been supplied to the appellant. And these are the same report, and other information or documentary evidence that the appellant asserted ought to have been supplied to him in the course of the disciplinary proceedings against him which did not under reg. 37(5) involve the third respondent requiring clarification and escalate the proceedings into an oral hearing with the establishment of an investigation committee under reg. 37B.

[48] In our view, there should not be such a distinction. How the proceedings proceed – whether with an investigation committee and oral hearing (pursuant to reg. 37B) or without one (pursuant to reg. 37) – should not at all matter *vis-à-vis* the need for the officer in question to be furnished with documentary evidence to be relied on by the Disciplinary Authority against him, in order to enable him to prepare a proper defence. This is also

because the overarching consideration here is that disciplinary proceedings had been instituted and the punishments, in both situations, are the severe consequences of either dismissal from service or reduction in rank, should the charges be proved.

[49] In this connection, a reference to the decision of this court in *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 2 CLJ 771; [1996] 1 MLJ 261 which interpreted the term "life" in art. 5(1) of the Federal Constitution to include "livelihood" is especially pertinent. Gopal Sri Ram JCA (later FCJ) instructively expressed the same in the following terms:

> Adopting the approach that commends itself to me, I have reached the conclusion that the expression 'life' appearing in art. 5(1) does not refer to mere existence. It incorporates all those facets that are an integral part of life itself and those matters which go to form the quality of life. Of these are the right to seek and be engaged in lawful and gainful employment and to receive those benefits that our society has to offer to its members. *It includes the right to live in a reasonably healthy and pollution free environment. For the purposes of this case, it encompasses the right to continue in public service subject to removal for good cause by resort to a fair procedure.*
>
> (emphasis added)

Scheme Of Regulations 37 And 37B Supports Presence Of Duty To Furnish Documentary Evidence

[50] In any event, the scheme of regs. 37 and 37B, as well as the 1993 Regulations generally do not admit of such distinction. This is evident from the fact that even though the requirement to supply documentary evidence to the officer is not expressly stated in reg. 37 (unlike the specific words as found in reg. 37B(4)), the right to be heard under art. 135(2) of the Federal Constitution is effectively replicated in reg. 34 of the 1993 Regulations (as well as in reg. 37(2)(a) as referred to above) which reads:

> 34. Conditions for dismissal or reduction
>
> (1) Subject to sub-regulation (2), no officer shall be dismissed or reduced in rank in any disciplinary proceedings under this Part unless he has first been informed in writing of the grounds on which such action is proposed and he has been afforded a reasonable opportunity of being heard.

[51] It should be pointed out that as specifically mentioned above, the grounds to be informed to the officer are in reference to an action proposed to be taken. And he must be given a reasonable opportunity of being heard. This concerns what is embodied in the charges framed against the officer as well as the entirety of the disciplinary letter from the Disciplinary Authority which stated the determination of a *prima facie* case of misconduct. It is crucial therefore that in order to ensure adherence to this requirement, the charges not only state the allegations such as in this case the charges of being absent without leave or reporting late for duty, but also in order to give true

effect to the right to be heard, be supplied with or refer to the actual grounds or bases – or for all intents and purposes the evidence such as the documents including the reports and other information – on which such allegations are framed.

[52] After all, pursuant to reg. 37(4), before imposing any punishment, the third respondent here only needed to consider the written representation submitted by the appellant, and to decide whether the applicant in that written representation exculpated himself from the charges.

[53] This therefore further reinforces the proposition that before the third respondent got to the stage of evaluating the critically all-important written representation, it is absolutely imperative that the charges against the appellant be supplied with the documents and information intended to be relied on by the Disciplinary Authority in the said charges levelled against the appellant, so that the written representation to exculpate himself represents an effective defence in the exercise of his right to be heard. We cannot emphasise enough that the fundamental principles of procedural fairness require that all parties are entitled to be given access to and challenge evidence relied upon by one party in such proceedings and to call their own evidence in response.

The "Grounds" On which The Disciplinary Action Is Proposed Refer To The Charges And The Documentary Evidence Supporting The Same

[54] It bears emphasis that both regs. 34(1) and 37(2)(a) state that the grounds on which the disciplinary actions are being proposed must be informed in writing to the relevant officer. It cannot be denied that in the case before us, the disciplinary letter did, on the surface, appear to follow the language of reg. 37 in terms of compliance with reg. 34 which requires the grounds for the proposed action be informed to the appellant by the use of the word alasan-alasan (or the grounds). The said disciplinary letter of 26 March 2019 started off by stating that based on a report and after considering all information, the Disciplinary Authority – the third respondent – determined that there was a *prima facie* case of misconduct that could result in the punishment of dismissal from service or reduction in rank. And this in turn was stated to be based on the grounds set out therein, which – however turned out to be the charges themselves.

[55] These two charges however merely stated the alleged facts constituting the misconduct. Thus, in the first charge, the allegation was merely that the appellant had in collusion with others, left his place of posting/station and in the second charge, it was that he had reported for duty late, both infractions said to be in breach of reg. 4(2)(g) of the 1993 Regulations. But the disciplinary letter and the charges it contained did not refer to the documents or other evidence on which the allegations as framed in these charges were based. Neither were they supplied to the appellant.

[56] In our judgment, in order to ensure consistency with and to give effect to the right to be heard embodied in reg. 37B(4), and art. 135(2) of the Federal Constitution as well as the well-entrenched observation by Lord Denning in *B Surinder Singh Kanda* (*supra*) and the long line of cases which have followed it, it is only right that the actual grounds (as the word is mentioned in regs. 34(1) and 37B) for the alleged misconduct, being the documentary or other evidence intended to be relied on by the respondents in the proceedings against the appellant ought to have been furnished to the appellant to enable him to prepare his defence in the written representation in a fashion truly envisaged by the proper application of the right to be heard relevant in this context.

[57] As such, whilst it may be argued that reg. 37 of the 1993 Regulations does not refer to a specific or express duty on the third respondent to supply documents, materials or information used in the exercise of the respondents' discretion when directing the appellant to make representation to exculpate himself, the existence of such a duty – to make available documents and other evidence supporting the charges – is also not inconsistent with the scheme of reg. 37, when read with reg. 34 and reg. 37B, and in any event would be well in accord with the fundamental principle on the right to be heard, including the constitutional provision enshrined in art. 135(2).

Burden Is On Authority To Furnish Documentary Evidence Not On Officer To Make Request

[58] We accept that cases have been submitted by the respondents to the effect that a matter which is only raised after the decision has been made would likely be construed as an afterthought and not relevant in any public officer's attempt to exculpate himself from charges levelled against him. And here, at all material times, as found by the High Court, the appellant did not request for any documents or materials to be furnished or given access to him including reports, documents, CCTV recordings and any evidence used to charge the appellant. Therefore, it was argued that he could not now complain that such right was not afforded to him.

[59] We are also not unaware that unlike in *Vijayarao Sepermaniam* (*supra*), where the officer in his show cause letter, denied all charges and requested for relevant documents that formed the subject matter of the charges against him to be supplied to him, in contrast, in the instant case before us, there was no clear evidence of any such request by the appellant. Even his written representation did not allude to any request for documentary evidence. Still, we do not think that this should make a difference. Not when the threshold right to be heard in terms of providing the appellant with the documents and other information has not been met in the first place.

[60] Although we are fully cognisant of the fact that based on authorities, the general prevailing view appears to be that the Disciplinary Authority is obliged to furnish documents to any public officer like the appellant only if there is a request from the officer and not if otherwise, we have not been referred to any case which had to examine the specific issue in the context that we now consider. Equally importantly, in light of the need to ensure conformity with the fundamental right to be heard in the context of reg. 37 in terms discussed above, in our view, the burden ought not to be on the officer to make a request for any document or evidence that he thinks could help him to prepare his answer to the charges levelled against him but should instead be on the Disciplinary Authority to ensure that these documents or the evidence intended to be relied on to prove the charges, are supplied to the officer to enable him to prepare a proper and meaningful written representation in his attempt to exculpate himself.

[61] We venture to add that the other reason why the supply of document and other information to the public officer should be automatic on the part of the Disciplinary Authority whether or not the officer has made any request for the same is that the officer might not know what any of these documents are, or that they even exist, or what they contain. It could even be that whilst the existence of these documentary evidence is known to the officer, he is not aware that the documents or information are being relied on by the authority to make out their allegation of misconduct against the officer.

[62] This was the situation which concerned the police inspector who was dismissed in *B Surinder Singh Kanda* (*supra*), whereby a particular report of the board of inquiry which contained a severe condemnation of the inspector had been sent to the adjudicating officer before the latter sat to enquire into the charge, without the inspector being given the opportunity of dealing with it, for he only received it much later during the hearing of the action to quash the dismissal. Thus the issue of him not making the request did not arise at all. The duty is on the authority to supply the documents to ensure adherence to the rule of natural justice on the right to be heard. A similar situation (and outcome) may also be seen in *Shamsiah Ahmad Sham* (*supra*) and *Rohana Ariffin* (*supra*).

[63] Moreover, the non-supply of the report and information in this case would also be *prima facie* prejudicial to the right of the appellant to adequately and effectively prepare his answers to the charges considering that here, the appellant is a low-ranking police personnel who had to prepare his representation letter *sans* legal advice and without knowledge of the full implications of the said representation.

Conclusions

[64] In light of the foregoing, to conclude, we say that under reg. 37 of the 1993 Regulations, when the Disciplinary Authority communicates with an officer *vide* a disciplinary letter to inform him of a *prima facie* finding of a misconduct against him that could, as a punishment, result in his dismissal or reduction in rank, the charges framed against the officer as set out in the disciplinary letter in respect of which the officer is requested to reply by way of written representation within 21 days must, without exception, include the document and information – or the evidence – intended to be relied on by the Disciplinary Authority to establish the charges, regardless of whether any request is made for the same.

[65] The breach of the right to be heard in this case is a fundamental procedural flaw that justifies judicial appellate intervention. We are as such constrained to agree with the counsel for the appellant that there had been an infringement of the rules of natural justice on the right to be heard as enshrined in art. 135(2) of the Federal Constitution which as a consequence renders the disciplinary proceedings null and void.

[66] For the above reasons, we find merits in this appeal which we now allow, and set aside the order of the High Court. The decision by the third respondent to dismiss the appellant from service dated 23 October 2019 is null and void, quashed and set aside; and the judicial review application of the appellant is allowed, with order in terms of the reliefs as prayed for. The appellant is thus reinstated to his previous position as lance corporal with immediate effect.

[67] We further make the consequential order that the case be remitted to the High Court for an inquiry as to damages to determine the appellant's loss of salaries and other emoluments and benefits and for the amount so determined to be paid by the respondents to the appellant with interest thereon at the rate of 5% per annum from 23 October 2019 until the date of full payment or realisation. We order the respondents to pay costs of RM10,000 to the appellant.